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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LINDA MILLARD,

Plaintiff,

vs.

NORTHLAND GROUP, INC.,

Defendant.

Case No.: 2:13-cv-00819-JAD-PAL

**Order Denying Motion
for Attorney Fees**

Plaintiff Linda Millard alleges that defendant Northland Group, Inc., engaged in harassing and abusive practices in violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et. seq., by attempting to collect a debt from her after her husband filed for bankruptcy and received a discharge of the debt. Doc. 1 at ¶ 8–14. Millard also alleges that Northland’s attempts to collect the debt invaded her privacy. *Id.* at ¶ 31–38. On May 27, 2014, the court dismissed Millard’s complaint for failure to state a claim and granted leave to amend by June 11, 2014. Millard did not amend, and Northland moved to dismiss. Doc. 24. On July 8, 2014, Millard filed a notice of voluntary dismissal with prejudice under Fed. R. Civ. P. 41. Doc. 25.

Northland now moves for attorney fees under 15 U.S.C. § 1692k(a)(3), which permits the award of fees and costs against a plaintiff who has brought an FDCPA action “in bad faith and for the purpose of harassment.” Doc. 26. Finding that Northland has not demonstrated Millard’s action was brought in bad faith and for the purpose of harassment, I deny Northland’s motion.

Legal Standard

Section 1692k(a)(3) of the FDCPA provides that “[o]n a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award

1 to the defendant attorney's fees reasonable in relation to the work expended and costs."¹ It is
 2 therefore the defendant's burden to establish, through something more than "conclusory assertions,"
 3 that the plaintiff brought her FDCPA action both in bad faith and for the purpose of harassment.²
 4 Section 1692k(a)(3) does not permit the award of attorney fees against a plaintiff's attorneys; rather,
 5 it "authorizes attorney's fees and costs only against the offending plaintiff or plaintiffs."³ Therefore,
 6 "there must be evidence that [the plaintiff] both knew that [his or her] claim was meritless and
 7 pursued it with the purpose of harassing the defendant."⁴

8 Discussion

9 A. Northland Has Not Made a Sufficient Showing of Bad Faith

10 To establish that Millard brought her action in bad faith, Northland essentially asserts that:
 11 (1) the complaint did not state a valid cause of action under the FDCPA; (2) Millard requested leave
 12 to amend and then failed to amend her complaint before the deadline set by the court; and (3)
 13 Millard voluntarily dismissed her complaint, which "reflects that [she] knew that there was no legal
 14 basis to file" it.⁵ Without citing any legal authority, Northland relies on these assertions alone to
 15 support its conclusion that Millard acted in bad faith and for the purpose of harassment.⁶

16 Northland falls short of carrying its burden. That a claim is "meritless and properly
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19 ¹ 15 U.S.C. § 1692k(a)(3).

20 ² *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 940–41 (9th Cir. 2007); *Bonner v.*
 21 *Redwood Mortgage Corp.*, No. C 10-00479 WHA, 2010 WL 2528962 at *5 (N.D. Cal. June 18,
 2010); *Chavez v. Northland Grp.*, No. CV-09-2521-PHX-LOA, 2011 WL 317482 at *5 (D. Ariz.
 22 Feb. 1, 2011).

23 ³ *Hyde v. Midland Credit Mgmt., Inc.*, 567 F.3d 1137, 1140–41 (9th Cir. 2009).

24 ⁴ *Conner v. BCC Fin. Mgmt. Servs., Inc.*, 597 F. Supp. 2d 1299, 1309 (S.D. Fla. 2008); *see*
 25 *also Chavez*, 2011 WL 317482 at *5 (requiring a "showing of bad faith and harassment *on the part*
 26 *of Plaintiff*") (emphasis added).

27 ⁵ Doc. 26 at ¶ 19. Northland also asserts that Millard's attorney has "filed numerous
 28 FDCPA complaints with this Court." *Id.* However, because § 1692k(a)(3) only authorizes an award
 of attorney fees against Millard, the mere fact of her attorney's past conduct is irrelevant.

⁶ *Chavez*, 2011 WL 317482 at *5 (finding that the failure to support similar assertions with
 case law contributed to defendant's failure to establish bad faith and harassment).

dismissed on the pleadings” does not necessarily mean it was argued in bad faith.⁷ Northland must offer evidence that Millard herself knew her claims lacked merit and pursued them anyway. With respect to Millard’s knowledge, Northland asserts only that her choice to voluntarily dismiss the case indicates she knew she lacked a legal basis to file her complaint. But, a voluntary dismissal, which saves the parties and the court considerable time and expense, is generally not evidence of bad faith. On the contrary, when a plaintiff discovers in the early stages of litigation that her complaint lacks merit, a “subsequent voluntary dismissal is indicative of . . . good faith.”⁸ Accordingly, Northland has not offered evidence sufficient to support a finding of bad faith.

B. Northland Has Not Made a Sufficient Showing of Harassment

Even assuming that Northland had established that Millard acted in bad faith, its motion is devoid of any facts that might permit the court to infer a purpose of harassment.⁹ A defendant’s “conclusory assertion that [p]laintiff’s purpose was to harass does not entitle it to attorney’s fees under the Federal Debt Collection Practices Act.”¹⁰ Therefore, I find that Northland has not satisfied its burden of establishing that Millard brought her FDCPA action for the purpose of harassment.

Conclusion

Accordingly, and based on the foregoing reasons, IT IS HEREBY ORDERED that Northland’s Motion for Attorney Fees **[Doc. 26]** is **DENIED**.

DATED: November 17, 2014.


JENNIFER A. DORSEY
UNITED STATES DISTRICT JUDGE

⁷ *Simmons v. Roundup Funding, LLC*, 622 F.3d 93, 97 (2d Cir. 2010).

⁸ *Simonia v. Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118, 1122 (9th Cir. 2010).

⁹ *Cf. Black v. Equinox Fin. Mgmt. Solutions, Inc.*, 444 F. Supp. 2d 1271, 1275 (N.D. Ga. 2006) (finding purpose of harassment where plaintiff continued to pursue litigation after discovery produced no evidence to support the initial “hunch” on which his claims were based).

¹⁰ *Chavez*, 2011 WL 317482 at *5 (declining to find bad faith or harassment where plaintiff filed a “boilerplate claim” with minimal facts, resulting in voluntary dismissal).